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IN THE

Supreme Court of the United States

October Term, 1966.

No. 1113

~~JAN A. BATA, and~~ JAN T. BATA, individually and as a representative of JAN A. BATA, deceased,

Petitioner,

v.

CENTRAL-PENN NATIONAL BANK OF PHILADELPHIA,

and

THOMAS J. BATA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966.

No.

JAN A. BATA, AND JAN T. BATA, INDIVIDUALLY AND AS REPPRESENTATIVE OF JAN A. BATA, DECEASED,
Petitioner,

v.

CENTRAL-PENN NATIONAL BANK OF PHILADELPHIA,

AND

THOMAS J. BATA,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

Petitioners,[1] citizens and residents of Brazil, pray that a Writ of Certiorari issue to review the Judgment of the Supreme Court of the Commonwealth of Pennsylvania, rendered in the above entitled case on November 15, 1966; Petition for Rehearing denied December 6, 1966.

1. Petitioner Jan A. Bata died in Brazil August 23, 1965. Respondents Motion for Judgment on the Pleadings was granted on September 9, 1965, and Final Judgment was entered on October 18, 1965. Appeal was taken on behalf of Petitioner Jan A. Bata by his attorneys, and also by his son, Jan T. Bata, individually, and as Jan A. Bata's personal representative (although not qualified as such in Pennsylvania), as the final order was directed to him.

OPINION BELOW.

The Opinion of the Court of Common Pleas of Philadelphia County is unreported. It is printed in Appendix B hereto, *infra,* p 2a. The Opinion of the Supreme Court of Pennsylvania is reported at 423 Pa. 373 (1966) and appears in Appendix B hereto, *infra,* p. 12a. Petition for Rehearing was denied on December 6, 1966.

JURISDICTION.

The Opinion of the Supreme Court of Pennsylvania was entered on November 15, 1966 and appears in Appendix B hereto, *infra,* p. 12a, affirming the judgment and decree of the Court of Common Pleas. A timely Petition for Reargument was filed by the Petitioner on November 25, 1966 and denied by the Supreme Court of Pennsylvania on December 6, 1966.

The federal question was raised in Petitioner's Answer and New Matter, paragraphs Fifty-Second through Fifty-Sixth (R. 86a) and traversed in Respondents' Reply, paragraph Fifty-Second (R. 131a).

The jurisdiction of this Court is invoked under Title 28 U. S. C. Section 1257(3).

QUESTION PRESENTED.

Introductory.

Respondent Thomas J. Bata sought to reform an escrow agreement and to enforce the reformed agreement in the Court below. Petitioner pleaded that he had entered into the basic escrow agreement because of judgments that had been obtained in New York and Delaware through fraud and that documents, important to their case, and which, because of the oppressive and fraudulent actions of Respondent Bata, had hitherto been unavailable, would prove this fraud. Petitioner also counterclaimed alleging true ownership of all of the property in question and sought discovery, under the Pennsylvania Rules of Civil Procedure to establish the fraud. Respondent Bata, in paragraphs Seventieth through Seventy-Fourth of his Reply, invoked the challenged decisions (*Bata v. Hill,* 163 A. 2d 493; *Bata v. Bata,* 306 N. Y. 96, 115 N. E. 2d 672, and *Bata v. Jucker,* Civil Action No. 1435-1947, of the Zurich Superior Court) (R. 134a).

The Question.

1. Whether the Supreme Court of the Commonwealth of Pennsylvania violated procedural due process in automatically giving effect in the State of Pennsylvania to judgments obtained through fraud in New York and Delaware, where Respondents seek to invoke these judgments as *res judicata* and where Petitioner pleads specifically the said judgments were obtained through fraud; and where the Petitioners are denied the opportunity to present this evidence; denied the right to examine the Respondent and his principal expert witness upon this new evidence of fraud which evidence had previously been suppressed by the Respondent through the secret payment of $100,000 to the

Czechoslovakian Government for this purpose; denied the right to have discovery of documents to establish the fraudulent and false nature of the document which Respondent had used as "the bedrock of his case" in obtaining the New York and Delaware judgments; denied the right to examine the Respondents upon other false and fraudulent evidence which had been presented by the Respondents to the Courts including a forged letter of a Czechoslovakian lawyer and which formed the basis for the fraudulently obtained judgments.

CONSTITUTIONAL PROVISION INVOLVED.

The pertinent portions of the Fourteenth Amendment to the Constitution of the United States are set forth in Appendix A to this Petition.

STATEMENT OF THE CASE.

This was an action in equity by Respondent Thomas J. Bata, herein called Respondent, against Respondent, Central-Penn National Bank, an escrow holder, herein called Central-Penn, and Petitioner Jan A. Bata, herein called Petitioner. Respondent Bata and Petitioner Bata are of the Bata family of industrialists originally of Moravia, Czechoslovakia, shoemakers for three centuries, and the industrial complex involved is the world's largest shoe making enterprise and related business entities, totalling more than one hundred major units, and valued in excess of three hundred million dollars.

In his Complaint, Respondent claimed the right to the escrow property without the conditions of the escrow having been performed, and averred that such non-performance was caused by Petitioner's failure to cooperate (R. 8a).

Central-Penn filed an Answer averring no knowledge and generally denying the averments of the Complaint. Petitioner filed an Answer averring two principal defenses: (1) there was no duty to cooperate with respect to terminating the proceedings in the High Court in London other than such cooperation as he had given; and (2) new matter of duress, fraud, and lack of consideration in the agreement of which the escrow agreement was a part. Petitioner, as part of his Answer, also set forth three counterclaims; the first, on the basis that the said agreement was avoided on the grounds before stated and that equity should divide the Bata worldwide enterprises into two equal parts, one to go to the members of each part of the Bata family; second, to require delivery of the escrow property to Petitioner; and third, to require Respondent to give an accounting (R. 73a). After the pleadings had been completed, Respondent moved for Judgment on the Pleadings (R. 118a).

Prior to filing his Answer, Petitioner gave notice to Respondent to take depositions of Respondent and Alan R. Rado, who had appeared as expert witness on Czechoslovakian law in the New York and Delaware litigation, whereupon Respondent applied for a Protective Order preventing the taking of said depositions. This Protective Order was granted, and Petitioner's attorneys were prevented from discovery for more specificity as to Respondent's fraud (R. 68a).

Subsequent to the filing of the Counter Reply to New Matter and before Respondent's Motion for Judgment, Petitioner filed a Motion and Rule upon Respondent to produce documents. The presiding judge did not sign this Rule and, therefore, it could not be docketed, and was in fact not docketed until after the Motion for Judgment was filed.

Subsequently, after discovery of new and additional evidence of fraud, Petitioner filed a Motion to Show Cause why his Answer, New Matter and Counterclaims should not be amended. This Motion was overruled, and the Rule was refused (R. 798a, 816a).

Petitioner Jan A. Bata died August 23, 1965, and on the same day, all the parties and the Court were so notified by Petitioner's attorneys.

On September 9, 1965, sixteen days after Jan A. Bata's death, the Court granted Respondent's Motion for Judgment on the Pleadings, Respondent to submit an Order (R. 817a).

On September 13, 1965, formal suggestion of the death of Petitioner, Jan A. Bata, was filed. On the same date, Petitioner's attorneys filed a Motion to Stay Proceedings to provide an opportunity to substitute parties caused by the death of Petitioner, Jan A. Bata. On the same date, Petitioner's attorneys also filed a Motion for a Rule to permit further amendments of his pleadings to show additional facts regarding the pattern of fraud. On October 18, 1965, the Court denied these Motions and entered final judgment (R. 818a-832a, 871a).

The transactions of March 27, 1962 in this case, containing the escrow in question, were made during the trial of the New York Receivership case. The receiver in New York held certain funds of the Czech corporation, Bata a.s. Zlin, taken over by the Czech State, which funds were claimed by Respondent, the Czech State and Petitioner (R. 121a)—Plaintiff's Reply, 22 par.; (R. 592a), Defendant's Counter Reply, 78 par.

There was also pending in New York an accounting case to determine the ownership of the so-called "minority shares" in the Bata corporations, other than the Leader shares.

The ownership of the Leader shares controlling the majority interest in the Bata corporations has been decided in Respondent's favor in New York and Delaware.

In between these decisions, the Supreme Court of the Netherlands at the Hague decided that the ownership of the "minority shares" in the Dutch Bata company had passed to Petitioner upon the death of Thomas Bata and decided in Petitioner's favor (R. 611a).

Petitioner was not an original party to the Swiss case and while it was adverse to his claim as intervenor, it was not binding on his title.

The matters involved in these proceedings had their origin in the death of Thomas Bata, Sr. in 1932. At that time, two documents were found together in his safe, written in his handwriting, transferring all the Bata enterprises to Petitioner, subject to certain monetary charges in favor of his wife and son and others. (Moravian custom required the exercise of this title for the benefit of all members of the family, and Petitioner fulfilled this custom as "Chief.") The handwritten documents also gave certain landed estates to his wife and son (R. 100a-103a).

On the basis of the validity of his claims under these documents, and with the consent and approval of Respondent and his mother, Petitioner took possession and control of the Bata corporations and built them up from a value in 1932 of approximately $15,000,000 to a value of approxi-

mately $150,000,000 in 1942. When the home base of the enterprises in Czechoslovakia was taken over by the Nazis, he was blacklisted by the United States, Great Britain and Canada. He had not, and did not at any time, aid the Nazis, and did assist many Czechs in escaping from the Nazis. At that time, he entrusted control of the Bata companies to Respondent, residing in Canada, to be returned to him six months after the end of the War (R. 600a). The companies are now worth over $300,000,000.

Respondent also made the claim in the New York and Delaware trials that the handwritten documents of Thomas Bata, Sr. were for the purpose of tax evasion and a fiction as to title. However, later discovered testimony given by Respondent on February 4, 1942, in a proceeding before United States Government officials, directly contradicts this in Respondent's own words (R. 741a). Respondent stated in this 1942 conference that the control of the Bata company of Zlin passed 100% directly from Thomas Bata to Petitioner by will (R. 598a, 762a).

This 1942 declaration by Respondent was made at a time when the Nazis were in control of Czechoslovakia and when Respondent had every reason to swear that he was the real owner, as it would have eliminated the problem caused by Petitioner being blacklisted. In addition, it was made when it was no longer necessary to continue the alleged fiction to save Czechoslovakian taxes. The Delaware position of Petitioner was that the property passed to him by will. This 1942 transcript was suppressed not only at the New York trial, but also at the Delaware trial, and was only recently uncovered by Petitioner through discovery procedures in the *Nash* case. (*Nash v. Bata-Best et al.*, Civ. Action No. 723-63, U. S. D. C., District of Columbia.)

Subsequent to control of the Bata companies being turned over to Respondent, to be returned after the War, Respondent, with the vast assets of the Bata empire behind him, excluded all other members of the Bata family from the enterprises and commenced many law suits against

Petitioner throughout the world (R. 601a). So far as is known this litigation initiated by Respondent was the first time in the three hundred year history of the Bata family that litigation was initiated within and between members of the family. Not only was Petitioner handicapped by lack of funds in defending these claims, but the proofs Petitioner needed to defend his claim were mainly in Czechoslovakia, and he was proscribed from entering that country (R. 604a). In fact, it was impossible for any of his representatives to get into that country to look at records until Petitioner's present counsel did so (R. 604a). He was thus powerless to know the fraudulent nature of the "bedrock of our case" document presented by the Respondent.

At the New York and Delaware trials there was also a question whether the Leader shares were in the safe, the contents of which were turned over to Petitioner. Thomas's widow testified that they were not. Petitioner testified the opposite, but was disbelieved, and the Court finding was against him on this fact. But the fact of these shares being in the safe and being delivered, found to be necessary in both the New York and Delaware litigation, is established by the official protokol of the Probate Court Commissioner of the Thomas Bata estate, dated July 12, 1932, Doc. 13917 and obtained for the first time by Petitioner in September 1965. This protokol confirms Petitioner's title on this point and confirms the truth of his New York testimony, disbelieved by the New York Court. The second amendment refused by the Pennsylvania Court, offered by defendant to its Answer, New Matter and Counterclaims, avers the suppression of this document by Respondent in the New York Receivership trial, and avers the fact that Petitioner's attorneys had only recently discovered it in the records in Czechoslovakia, and on September 10, 1965, for the first time, obtained a copy (R. 826a, 827a).

The March 27, 1962 transaction was forced on Petitioner in the case in New York involving the minority shares in the Bata companies, because of the decisions of

the New York and Delaware Courts and the similar testimony given in the Receivership case. In addition, practically all of Petitioner's assets had been expended in defending his claim in the many law suits brought throughout the world by Respondent, he was without funds to continue his defense, and his health was broken (R. 77a). On the other hand, Respondent had the vast assets of the Bata empire at his disposal and the pressures against the Petitioner on this score were overwhelming and coercive.

Subsequent to March, 1962, the possibility of uncovering Respondent's fraud was increased and further investigation was motivated, when Petitioner's counsel and Respondent's counsel went to London for the purpose of terminating the proceedings in the High Court of Justice (R. 75a). At that time, the British Alien Property Custodian refused to join in the "Tomlin Order" (R. 75a). There was a misconception of the facts due to a misstatement of facts on Respondent's part (R. 604a). As stated in Petitioner's Answer, Petitioner's counsel requested permission to check the files and records of the said Custodian, the said Custodian was willing, but Respondent's counsel refused (Answer, Par. 12).

After the refusal of counsel for Respondent to permit the review of the records of the British Alien Property Custodian, and after the completion of the terms of the first escrow, namely, on or about June 20, 1963, Petitioner obtained for the first time, a copy of a transcript of the statements of Respondent made February 4, 1942 to the officials of the United States Government, referred to above (R. 607a).

After the March, 1962 transactions, but prior to filing their Answer and New Matter September 21, 1964, Petitioner's attorneys discovered that Respondent's attorneys had paid approximately $100,000 to the Czech Government for the purpose of suppressing evidence and fraudulently preventing Petitioner from obtaining documents from Czechoslovakia in the New York Receivership case, which

would have proved his rights in that action (R. 84a) (Answer par. 47. Amendment 7/28/65, par. 17). This payment was confirmed by Respondent's reply in Paragraph 113 of New Matter filed October 13, 1964 (R. 163a) (Stassen Aff. re Amendment 7/28/65 (R. 687a).

After the escrow was signed, Petitioner's attorneys obtained in Czechoslovakia the information that the important letter of the Czechoslovakian lawyer, purporting to contain the Deed of Delivery, presented to the court in New York in the Receivership action by Respondent was a forged letter and that the purported copy of the Deed of Delivery, which it was alleged was obtained with the forged letter, was a false, inaccurate and fraudulent document (R. 78a). The false and fraudulent Deed of Delivery was a key document in the Receivership Trial and a key representation in bringing about the March 27, 1962 transaction (R. 78a).

After Respondent brought the present action, namely, on September 6, 1963, Petitioner's counsel attempted to have discovery from Respondent, which would have disclosed with specificity, the misstatements and misrepresentations in reference to the files and records of the British Custodian, with reference to the Government transcript, and with reference to other areas of suspicion developed by Petitioner since March, 1962. This was refused (R. 68a).

Thereafter and after the first pleadings by Petitioner, Petitioner's attorneys obtained in Czechoslovakia a copy of a very important document signed by Respondent and his mother, which became the basis of Petitioner's first motion for leave to amend. In it, Respondent and his mother, over their signatures, stated that they recognized the oral purchase contract concluded on the 10th of May 1931 as valid and that they had no objection against it (R. 697a, 711a).

Thereafter and after the death of Petitioner, his counsel obtained a second key document, being the official protokol of the Court Commissioner in Czechoslovakia made

at the time of the death of Thomas Bata, Sr. and the opening of his safe (R. 825a). This protokol confirms Petitioner's title to the property involved and substantiated his position. This protokol was suppressed by Respondent and other evidence in contradiction to this suppressed evidence was presented to the Courts by the Respondent. This protokol was the basis of the second Motion for Leave to Amend, which was also denied by the Court below (R. 871a).

Thus Petitioner, after discovery of the important evidence of fraud and after obtaining the suppressed protokol in Czechoslovakia, was never allowed to amend his pleadings in the Court below to present the new evidence of fraud that he had uncovered and which had never been before any Court during the extensive Bata litigation initiated by Respondents.

REASONS FOR GRANTING THE WRIT.

A. The Decision Below Violates the Petitioner's Right of Due Process, Conflicts With Decisions of This Court, and Is in Error in Automatically Giving Effect, Res Judicata and Collateral Estoppel, to Decisions in New York and Delaware Obtained Through Fraud, Denying Petitioner the Right to Challenge These Judgments Effectively as Fraudulent.

As this Court has stated:

> "Due process . . . has to do . . . with a denial of that fundamental fairness, shocking to the universal sense of justice." (*Kinsella v. United States,* 361 U. S. 234, 80 Sup. Ct. 297, 80 Sup. Ct. 311, 4 L. Ed. 2d 268, 4 L. Ed. 288 (1960)) at 246.

The insistence of the Court below in giving effect to the decisions in New York and Delaware without granting Petitioner the right to demonstrate the fraud involved in their fundamentals operated to deprive the Petitioners of their rights and property without due process of law.

Petitioner pleaded that the Delaware and New York judgments were based upon fraud and as such were not to be given the force of *res judicata.* Petitioner pleaded the newly discovered false nature of the document which Respondent had presented as the "bedrock of his case" in New York and Delaware; the forged letter of the Czechoslovakian lawyer; the secret payment of $100,000 to the Czechoslovakian state to suppress key evidence; the suppression of the 1942 transcript; and Petitioner sought and was denied discovery, the right to examine Respondent and his expert witness, and the right to amend.

This Court has itself inquired into the facts and circumstances surrounding litigation resulting in a judgment subsequently invoked as *res judicata.*

In *Hansberry v. Lee,* 311 U. S. 32, 61 Sup. Ct. 115, 85 L. Ed. 22 (1940) this Court declared, at page 40:

> "State courts are free to attach such descriptive labels to litigations before them as they may choose and to attribute to them such consequence as they think appropriate under state constitutions and laws, subject only to the requirements of the Constitution of the United States. *But when the judgment of a state court, ascribing to the judgment of another court the binding force and effect of res judicata, is challenged for want of due process it becomes the duty of this Court to examine the course of procedure in both litigations to ascertain whether the litigant whose rights have thus been adjudicated has been afforded such notice and opportunity to be heard as are requisite to the due process which the Constitution prescribes.*" (emphasis supplied)

The Court below not only felt it had no duty "to examine the course of procedure in both litigations" but it also denied Petitioner the right to develop fully their pleadings and to examine the Respondent upon the transcript that he had denied existed and his expert witness upon a forged letter he had presented to the New York courts.

In *Hansberry v. Lee, supra,* this Court held that it was a denial of due process to give *res judicata* effect to a judgment obtained in a class action where the procedure did not insure proper representation and a full and fair consideration of the common issue. The Court summed up its holdings in these words:

> "We decide only that the procedure and the course of litigation sustained here by the plea of *res judicata* do not satisfy these requirements." (*Hansberry v. Lee, supra,* at p. 44)

In direct conflict with the holding of this Court, the Pennsylvania Supreme Court refused to review the factual environment of the earlier decisions, declaring:

> "While Appellant does not suggest that we deny recognition to these judgments, he does urge that Appellee should be denied all benefits to be derived from them, including the enforcement of the settlement agreement. Appellant's argument completely misses the mark because the only way for us to determine the validity of his assertion is to first consider if the judgments were indeed fraudulently obtained. This in turn requires us to consider Appellant's contention as being in the nature of a collateral attack; otherwise we would be forced to completely ignore the judgments and relitigate the precise issues determined elsewhere, namely, who is entitled to ultimate ownership of the Bata Enterprises."

In both *Hansberry v. Lee* and *Shelley v. Kraemer*, 334 U. S. 1, 68 Sup. Ct. 836, 92 L. Ed. 1161 (1947) in which this Court explained the *Hansberry* holding, the point is made that the earlier judgment was based on a false statement of fact, to wit: that the restrictive covenant had been signed by the requisite 95 per cent of the frontage when in fact it had not. The Illinois Supreme Court did not consider this point, holding the prior judgment *res judicata*. While not basing its opinion on this point, this Court refers to it in its discussion of the facts. Under parallel circumstances the Pennsylvania Court would not entertain evidence as to what per cent had signed such an agreement if it were to follow the rationale in the instant case.

The above holding by the Pennsylvania Supreme Court was pivotal in determining the rights of the parties. Denying Petitioners the right to examine the fraudulent foundations for the prior decisions, and to offer its evidence on the points, barred Petitioner from showing why the escrow agreement should not be enforced. Thus, there are no separate, independent state grounds upon which this decision can be sustained.

It is respectfully submitted that this decision of the Court below not only violates the right of due process in

a very major and important matter affecting the Petitioner, but it also reflects an application of *res judicata* in a manner which as a matter of important judicial policy requires review and reversal.

The older cases held that questions of fraud could not be raised in subsequent suits in other jurisdictions based upon judgments obtained in litigation in other states. *Christmas v. Russell,* 5 Wall. 290, 18 L. Ed. 475 (1866). There this Court held that fraud cannot be asserted as a defense to an action based upon a judgment obtained in a sister state. It decided that the decision of record of a state Court duly authenticated under the Act of Congress must have, in every other Court of the United States, the same credit as it would have in the state Court from whence it was taken.

This rationale is not followed today. This Court has frequently examined the basis of judgments sought to be enforced in sister states or where *res judicata* has been asserted as a defense to an action brought in the same state in which the original proceeding was held. *Christmas v. Russell,* decided prior to the adoption of the Fourteenth Amendment, no longer controls. This Court has repeatedly inquired as to the representation provided parties in class actions. Following *Hansberry v. Lee, supra,* it was held in *Fox Publishing Company v. United States,* 366 U. S. 683, 6 L. Ed. 2d 604, 81 Sup. Ct. 1309 (1961), that "the judgment in a class action will bind only those members of the class whose interests have been adequately represented by existing parties to the litigation," (citing *Hansberry v. Lee*). *Fox Publishing Company v. United States, supra,* p. 691.

Thus this Court has held that the effect to be given to a prior judgment is not automatic. The scope of the judgment must be examined, the jurisdiction over the parties and it is respectfully submitted that whether a parties, and, it is respectfully submitted, that whether a litigation is the same nature of question as that examined

in *Hansberry v. Lee.* The offering of fraudulent documents, and perjured testimony, is, at the very least, a matter which should be open to examination by the Court where one party seeks to invoke the fraudulently obtained judgments.

In fact it could not be otherwise. A careful reading of the Opinion of the Supreme Court of the Commonwealth of Pennsylvania reflects that it used the Arguments and Conclusions of the Delaware Supreme Court upon whom the fraud was practiced to hold that the 1942 transcript of Respondent's testimony before a United States Governmental investigating body, which had been suppressed in the Delaware litigation by the Respondent—he even denied its existence—was irrelevant to the determination of the issues of the instant litigation. As a result, the Pennsylvania Supreme Court stated that the determination by the Delaware Supreme Court, that the documents which it had before it concerning the period during the War, were irrelevant, meant that all the documents relating to the Wartime period were likewise irrelevant. It, of course, is logically impossible for the Delaware Court to have passed upon the relevancy of all documents known and unknown during the World War II period. This is the logical result of the practice of the Pennsylvania Court of not examining the fraudulent basis of a judgment which is invoked in its Court as a basis for a claim.

The cumulative effect of denying Petitioners the opportunities to amend their Pleadings as new and additional evidences of fraud came into their possession; the refusal to permit examination of Respondent and his expert witness on these specific items of fraud; the refusal to permit discovery of documents; the blanket application of *res judicata* to the New York and Delaware judgments obtained through fraud; operate to deprive Petitioners of their property without due process of law. The essence of the denial of due process is as this Court has said, the denial of that fundamental fairness, shocking to the universal sense of justice. Under the posture of the present

case, the Petitioners have been denied their day in court. They have been forced to suffer judgments, procured through fraud, and to see them enforced today although they have good evidence that fraud was used in their procurement. Where, as in this case, Respondents seek to claim in Pennsylvania the fruits of fraudulently procured judgments in other states, due process is not satisfied when the Pennsylvania court refuses to allow the Petitioner the opportunity to show and to develop fully the facts and circumstances surrounding the original judgments. It cannot be said that one so barred from presenting his case has been given his day in court. His day in court then becomes the empty formality. It may be urged that the way is open for the Petitioners to return to the New York courts and seek to set aside the judgments procured through fraud there and then to proceed to Delaware to set aside the judgments procured through fraud in that state. This Court has met that question in the past. Recognizing the circuitous logic involved in that procedure, this Court has stated that ". . . a judgment has no constitutional claim to a more conclusive or final effect in the State of the forum than it has in the state where rendered. See *Reynolds v. Stockton,* 140 U. S. 254, 264. If the court of the State which rendered the judgment had no jurisdiction over the person or the subject matter, the jurisdictional infirmity is not saved by the Full Faith and Credit Clause. See *Thompson v. Whitman,* 18 Wall. 457; *Griffin v. Griffin,* 327 U. S. 220. . . . Whatever may be the authority of a State to undermine a judgment of a sister State on grounds not cognizable in the State where the judgment was rendered . . . it is clear that the State of the forum has at least as much leeway to disregard the judgment, to qualify it, or to depart from it as does the State where it was rendered." *Halvey v. Halvey,* 330 U. S. 610, 614, 67 Sup. Ct. 903, 91 L. Ed. 1331 (1947).

The same problem was faced in *Griffin v. Griffin,* 327 U. S. 220 (1946), and cited in *Halvey.* In *Griffin* a judgment had been entered against the Respondent in the State

of New York. Respondent was domiciled at the time in Washington, D. C. Respondent claimed that the judgment was void for lack of due process and also asserted that fraud had been used in securing the judgment in New York. This Court considered the question of whether fraud had been used in procuring the judgment and eventually decided the case on other grounds. Even more significant is this language found in the footnote at page 230: "A judgment procured by fraud may be vacated on that ground in the state of its rendition, and the fraud may perhaps be urged as a defense against its enforcement elsewhere." This is the essence of the Petitioner's application. The Petitioner urges that to deny him the right to prove in the Courts of the Commonwealth of Pennsylvania that the judgments procured in New York and Delaware were procured through fraud, denies him his rights under the due process clause of the Fourteenth Amendment.

A judgment void where it was granted or which may be rendered void where it was granted is void everywhere. *Griffin v. Griffin,* 327 U. S. 220, 66 Sup. Ct. 556, 90 L. Ed. 635 (1946). "Since by virtue of the due process clause the judgment is ineffective in New York to adjudicate petitioner's rights for enforcement purposes, it cannot be made the instrument for enforcing elsewhere the obligation purportedly adjudicated by it." *Griffin v. Griffin, supra,* p. 232.

"A judgment obtained in violation of procedural due process is not entitled to full faith and credit when sued upon in another jurisdiction (citing cases). Moreover, due process requires that no other jurisdiction shall give effect, even as a matter of comity, to a judgment elsewhere acquired without due process." *Griffin v. Griffin, supra,* p. 228, 229.

The essential point remains that in all of the above cases, there was a discussion of fraud or other aspects which operated to deny the Petitioner his day in court or his right to have his interest adjudicated according to the principles of due process of law. The essence of the prob-

lem in the instant case is that the Petitioners were foreclosed from even presenting and developing the evidence showing that they were deprived of a fair hearing through the fraud.

CONCLUSION.

It is respectfully submitted that the petition for a writ of certiorari should be granted.

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March, 1967.

APPENDIX A.

Constitutional Provision.

Fourteenth Amendment to U. S. Constitution:

". . . [N]or shall any State deprive any person of life, liberty, or property, without due proeess of law; nor deny to any person within its jurisdiction the equal protection of the laws."

APPENDIX B.

Memorandum Opinion of Court of Common Pleas of Philadelphia County, Pennsylvania.

ALESSANDRONI, *P. J.*

This action in equity arises out of the performance of a settlement agreement made and executed by Thomas J. Bata, plaintiff, and Jan A. Bata, defendant, on March 27, 1962. Central-Penn National Bank was named escrow to hold monies and documents until conditions precedent were performed. Two escrows in the amounts of $200,000 and $500,000 respectively were established; in June, 1963 defendant Bata performed the conditions of the $200,000 escrow and the money was paid over to him. The $500,000 payment was to be made when defendant Bata assisted in terminating an action in London and transferred shares of British Bata Shoe Co., Ltd., to plaintiff. Defendant has not performed the conditions of the $500,000 escrow.

The complaint prays for a declaration that the documents presently held by Central-Penn are the property of the plaintiff and that Central-Penn be ordered to deliver them.

Apart from the numerous motions, notices, petitions, etc., filed in this matter, the pleadings consist of the following: a complaint, an answer with new matter and counterclaims, a reply with new matter and a counter-reply. Also available for consideration were the pleadings filed in the United States District Court for the Eastern District of Pennsylvania. Defendant filed a petition to remove the case to that Court and while there filed an answer in accordance with the Federal rules. When the case was remanded leave to file an answer in this Court to conform to our rules was granted.

All of the papers filed in the Federal Court are part of our record, but not essential to our determination.

When the pleadings were finally complete, and after extensive argument, plaintiff moved for judgment on the pleadings.

Our concern is with the settlement concluded in March, 1962; this action, i.e., the settlement, culminated many years of litigation which, beginning in 1947, has occupied courts in Switzerland, The Netherlands, Delaware and New York. The case in the Chancery Court of Delaware consumed one hundred trial days. We do not deem it necessary to recite the fascinating history of this controversy; it is set forth at length in *Bata v. Bata,* 163 A. 2d 493 (Del. Supreme Court).

The essential averments of the complaint, apart from captious interpretations of the allegations, are admitted. In New Matter defendant has alleged the affirmative defenses of duress, fraud and lack of consideration. In urging these defenses defendant seeks to upset the settlement and avoid the effect of his failure to perform.

We consider first the defense of duress. It is alleged that plaintiff caused defendant to be falsely arrested in the State of New York. However this civil arrest occurred in 1950. See *Bata v. Bata,* 277 App. Div. 335, 100 N. Y. S. 2d 191. Defendant averred that plaintiff wrote a false and fraudulent letter to leading banks in Europe, North and South America defaming defendant and blocking efforts to obtain funds so as to impose financial hardship on him. Defendant failed to plead the defamatory language set forth in said letter and the allegation that it was defamatory is a conclusion without foundation in fact.

It is further alleged that plaintiff financed a competitor in Brazil to harass the defendant; that through an associate acquired control of the La Bouchere Bank of Amsterdam and then increased his pressure on the defendant by having the bank call a loan owed by defendant. Again these allegations are conclusions without factual averments which are specific as to time, place and individuals involved.

Duress has been defined as that degree of restraint or danger, either actually inflicted or threatened and impending, which is sufficient in severity or apprehension to overcome the mind of a person of ordinary firmness. *Smith v. Lenchner,* 204 Pa. Superior Ct. 500.

Applying that definition to the allegations in support of the affirmative defense of duress, it is manifest that the allegations if true are far short of duress. There is nothing from which it can be concluded that defendant's mind was overcome. In addition, defendant's later action with reference to partial performance of the terms of the agreement completely cuts the ground from under his averments.

In June, 1963 defendant completed the conditions of the $200,000 escrow and thereby ratified the agreement entered into in March, 1962. This effectively bars defendant's claim that the settlement was obtained by use of duress. *Emery v. Third National Bank,* 314 Pa. 544. At that point in time there is no allegation that defendant Jan Bata was under any duress and his performance therefore constitutes ratification.

The allegations of fraud are an exercise in obfuscation. The use of the words "fraud", "gross fraud" and "fraud of gross proportion" are meaningless epithets. These allegations are directed against final judgments of the courts of Delaware, New York and Switzerland. The argument on this point is that plaintiff through fraud practiced on the Courts obtained final judgments in his favor and that the force of these judgments was an inducing factor in obtaining defendant's agreement to execute the settlement. The record is devoid of a single allegation of fact which could lead one to conclude that there was fraud in the inducement. We of course cannot tolerate or countenance collateral attacks on final judgments of courts of sister states and of another country. Such attacks are beyond our powers; if defendant's position is sound, he must proceed directly in the courts which entered the judgments.

The defense of lack of consideration rests on the proposition that the property actually belonged to defendant Jan Bata and therefore when the settlement was obtained, he actually received only a portion of his own property. This allegation is based on two documents, a "will" and a 'postupni listina" executed by Thomas Bata prior to his death. We will not discuss these documents any further because in many of the cases, counsel for defendant Bata, including present counsel, conceded that Jan's claim upon this basis was a fiction and the courts involved so found. These allegations are a complete rehash of the arguments made in the other actions.

If there was ever a controversy more completely litigated than this one, we are unaware of it. Defendant Bata has been represented over the years by eminent counsel, not the least of which is present counsel. The settlement was negotiated by present counsel and the various documents bear his initials. We do not comment on the tactics utilized in this case, because we think the record speaks for itself.

Needless to say we find no merit in any of the defenses presented; there is no question of fact. The majority of the allegations in defendant's pleadings have been presented many times to various courts over the years and have been categorically rejected.

Judgment was therefore entered on the pleadings in favor of the plaintiff.

Defendant has complained that Jan T. Bata, individually and as legal representative of Jan Bata was substituted as defendant after the death of Jan Bata. Review of the record reveals that his status was informally made known to the Court. This is a clerical matter and cannot have any effect on the merits of the decision. Defendant had petitioned for a stay pending substitution which it was averred would be made promptly. As with many other representations, this one failed to materialize.

After the entry of judgment defendant filed a petition for leave to amend the answer, a notice of depositions and other documents, all of which were dismissed and/or denied. The case was complete as of entry of judgment and no further pleadings could be allowed.

Supplemental Memorandum Opinion of Common Pleas Court of Philadelphia County, Pennsylvania.

ALESSANDRONI, *P. J.*:

The sentence in the first paragraph beginning, "The $500,000 payment was to be made . . ." is amended to read as follows:

The $500,000 payment was to be made when defendant Bata assisted in terminating an action in London and transferred shares of British Bata Shoe Co., Ltd. to plaintiff and register the bearer shares of Dutch Bata Shoe Company.

Opinion of Common Pleas Court of Philadelphia County, Pennsylvania, Sur Motions Filed After Judgment and Final Decree.

This action in equity sought specific performance of an escrow agreement; the escrow, of which there were two, were part of a comprehensive settlement which was executed March, 1962 between the Batas. Central-Penn National Bank was the escrow.

Voluminous pleadings and exhibits were filed in this court and also in the District Court of the United States, Eastern District of Pennsylvania. Extensive argument was heard and finally, on September 9, 1965, plaintiff's motion for judgment on the pleadings was granted. Plaintiff was directed to submit a form of decree.

A motion for judgment on the pleadings can only be made and considered when the pleadings are closed. Pa. R. C. P. 1034. The entry of judgment is final and it is an appealable order.

Nevertheless, defendant has continued to proceed as though this were an interlocutory order.

On September 13, 1965 a suggestion of the death of Jan A. Bata was filed, together with a motion (petition) for a rule upon plaintiff to stay proceedings until substitution of the legal representative of the defendant Jan A. Bata, Deceased; on the same date he filed a motion (petition) for a rule to show cause why the answer, new matter and counterclaim should not be amended.

By letter notice dated September 21, 1965 defendant fixed October 5, 1965 as the date for the taking of the deposition of plaintiff Thomas J. Bata, despite the existence of a protective order filed July 23, 1964.

On September 21, 1965 defendant sought an order continuing the petition filed September 13, 1965 for leave to amend until completion of the depositions.

On September 27, 1965 an affidavit in support of a petition for a rule upon plaintiff to show cause why the

oral depositions of plaintiff Thomas J. Bata, Jan T. Bata, the executor under the will of, successor to and representative of Jan A. Bata, Deceased and J. Mauss should not be taken.

Defendant's motions, petitions, etc. are without warrant of authority; once judgment is entered that terminates the action of the court. Defendant has the usual remedies of one against whom judgment is entered; he may not now amend the pleadings.

We note that the depositions which defendant desires to take are said to be related to a breach of the settlement agreement; this breach is alleged to have occurred in Brazil in August, 1965. It may well be that defendant has a cause of action arising out of same, but not in this action. Any breach of the settlement agreement must stand on its own merits.

ORDER.

AND Now, this 18th day of October, 1965, defendant's motions, petitions, affidavits and notices are dismissed; the Court enters the following

FINAL DECREE.

AND Now, TO WIT, this 18th day of October, 1965, it is Ordered, Adjudged and Decreed that Jan T. Bata, executor under the will of, successor to and representative of Jan A. Bata, Deceased, be substituted as defendant, and that:

1. The settlement agreement concluded between the parties on March 27, 1962 is valid and binding. Defendant Jan T. Bata, Executor, is ordered specifically

a. To cooperate in terminating the action pending in England, *Bata et al. v. Hardy et al.*, Chancery Division, High Court of Justice, 1956 B No. 2803, by consenting to the entry of an order in the form of the attached "Tomlin Order" in accordance

with his instructions heretofore given under date of March 27, 1962 to his English Solicitors Messrs. Richards Butler & Co.; and

b. To cooperate in the registration of the outstanding bearer shares of the Dutch Bata Lederfabrieken (Bata-Best) in accordance with the agreements dated March 14, 1962 among Thomas J. Bata, Jan A. Bata and Leader, A. G.

2. The defendant Central-Penn National Bank of Philadelphia is directed to deliver to plaintiff Thomas J. Bata the following property held by it in escrow pursuant to a letter of deposit dated March 27, 1962 signed by the parties' attorneys as part of the settlement agreement:

a. Certificate No. 8 for 398 ordinary shares of the British Bata Shoe Company, Ltd., with stock power signed by Jan A. Bata, a copy of which is annexed to the complaint and marked Exhibit 1;

b. Certificate No. 10 for 30,000 ordinary shares of the British Bata Shoe Company, Ltd., with stock power signed by Jan A. Bata, a copy of which is annexed to the complaint and marked Exhibit 2;

c. Letter dated March 26, 1962 signed by Jan A. Bata addressed to Thomas J. Bata regarding 75,398 shares in British Bata Shoe Company, Ltd., a copy of which is annexed to the complaint and marked Exhibit 3;

d. Letter dated March 26, 1962 signed by Jan A. Bata addressed to the Manager, Westminster Bank Limited, London, regarding Bave in liquidation, a copy of which is annexed to the complaint and marked Exhibit 4; and

e. Letter dated March 26, 1962 signed by Jan A. Bata addressed to Morgan Guaranty Trust Company of London, regarding Transoceanique S. A., a copy

of which is annexed to the complaint and marked Exhibit 5;

3. The defendant Central-Penn National Bank of Philadelphia is hereby instructed to retain the $500,000 then remaining in the escrow pending the further order of this court, which hereby retains jurisdiction to supervise the carrying out of the provisions of this judgment.

4. The defendant Central-Penn National Bank of Philadelphia shall incur no liability of any kind whatsoever to defendant Jan A. Bata, his heirs or assigns, by virtue of its obedience to this decree.

5. Defendant Jan T. Bata, Executor, is ordered

a. To procure and concur in the entry in the action pending in England, *Bata et al. v. Hardy et al.*, of an order in the form of the attached "Tomlin Order" as previously agreed to and initialed by his testator, and in accordance with his written instructions to his English Solicitors dated March 27, 1962; and

b. To vote his shares of the Dutch Bata Company in favor of an amendment of the corporate charter and by-laws of that company to effect the registration of its bearer shares at any shareholders' meeting called for that purpose.

By THE COURT,

(Sgd.) ALESSANDRONI, *P. J.*

OPINION OF THE SUPREME COURT OF PENNSYLVANIA.

FILED; November 15, 1966

ROBERTS, *J.*

On March 27, 1962, Thomas J. Bata and the late Jan A. Bata executed a settlement agreement purporting to terminate fifteen years of almost continuous litigation.[1] The agreement provided that the parties would exchange

1. The genesis of this controversy actually dates back to the 1932 death of Thomas Bata, a citizen of Czechoslovakia, who was survived by his widow, a son, Thomas J. Bata, the present appellee, and a half-brother, the late Jan A. Bata, the present appellant. During his life Thomas Bata had immensely expanded the family's shoe business into an international enterprise which at the time of his death was worth between $30,000,000 and $45,000,000. *Bata v. Bata,* 163 A. 2d 493, 496 (Del. 1960); *Bata v. Bata,* 306 N. Y. 96, 99, 115 N. E. 2d 672, 673 (1953). In order to avoid taxes, the profits from the foreign corporations were accumulated in foreign banks and the records documenting the expansion of Bata's wealth were concealed. For reasons peculiar to Czechoslovakian inheritance law, which would permit his estate to escape heavy taxation, Jan A. Bata, with the consent and knowledge of Thomas J. Bata, assumed title to his half-brother's enterprises under a fictitious prior oral contract of sale. *Bata v. Bata,* 163 A. 2d 493, 497, 517 (Del. 1960); *Bata v. Bata,* 306 N. Y. 96, 104-07, 115 N. E. 2d 672, 675-77 (1953).

For several years all went well and the business continued to thrive as a family concern. However, around the outbreak of the Second World War, friction developed between Thomas J. and Jan, which eventually led to conflicting claims of legal ownership. In 1947 the first suit was filed in Switzerland by the present appellee; the parties have been engaged in almost constant litigation since. During this period the courts of Switzerland, the Netherlands, England, New York, and Delaware, among others, have considered various aspects of this controversy. A more complete history of the dispute will be found in the recorded opinions of the New York and Delaware courts, *Bata v. Hill,* 139 A. 2d 159 (Del. Ch. 1958), aff'd sub nom. *Bata v. Bata,* 163 A. 2d 493 (Del. 1960), reargument denied 170 A. 2d 711 (Del.), cert. denied 366 U. S. 964 (1961); *Bata v. Chase Safe Deposit Co.,* 99 N. Y. S. 2d 535 (1950), aff'd sub nom. *Bata v. Bata,* 279 App. Div. 182, 108 N. Y. S. 2d 659 (1951), aff'd 306 N. Y. 96, 115 N. E. 2d 672 (1953).

stock certificates and instruments of assignment in various Bata companies, that they would execute comprehensive general releases as well as some 150 special releases, and that they would terminate each of the thirteen lawsuits then pending between them. In addition Thomas J. Bata agreed to pay Jan the sum of $3,400,000 of which $2,700,000 was paid upon the execution of the agreement and the remaining $700,000 placed in two escrows of $200,000 and $500,000. Central-Penn National Bank was named escrow to hold monies and documents until the conditions of release and delivery were performed.

In June 1963, Jan A. Bata performed the conditions contained in the first escrow and received the $200,000; he was to receive the remaining $500,000 upon terminating a pending English law suit, transferring shares of British Bata Shoe Co., Ltd. to Thomas J. Bata, and registering the bearer shares of Dutch Bata Shoe Company. When it became apparent that these conditions were not going to be performed, Thomas J. Bata brought an action in equity seeking specific performance. Initially the action was removed to a federal district court, but was subsequently remanded to the Court of Common Pleas of Philadelphia County.[2] In his answer Jan A. Bata denied that the settlement agreement required him to co-operate in terminating the English suit and, under new matter, raised the affirmative defense that the settlement agreement was void because it was entered into as the result of duress, coercion, and the force of adverse judgments which were themselves fraudulently obtained in other jurisdictions. In addition, appellant filed a counterclaim in which he reaverred the allegation of fraud and prayed that the court, inter alia, adjudge him "to be legally and equitably entitled to the ownership of all of the shares of the 'Bata Enterprises.'" The lower court granted appellee's motion for judgment on the pleadings and this appeal was prosecuted on behalf of Jan A.

2. *Bata v. Central-Penn National Bank*, 223 F. Supp. 91 (E. D. Pa. 1963).

Bata and by Jan T. Bata, his successor in interest.[3] For reasons stated hereinafter we are compelled to affirm the decree of the court below.

Under Pa. R. Civ. P. 1034, a motion for judgment on the pleadings may be granted in cases which are so free from doubt that a trial would clearly be a fruitless exercise. Such a motion is in the nature of a demurrer; all of the opposing party's well-pleaded allegations are viewed as true but only those facts specifically admitted by him may be considered against him. *Bureau of Child Care v. United Fund of Philadelphia,* 416 Pa. 617, 207 A. 2d 847 (1965); *Poole v. Great American Ins. Co.,* 407 Pa. 652, 182 A. 2d 509 (1962). Unlike a motion for summary judgment,[4] the power of the court to enter a judgment on the pleadings is further circumscribed by the requirement that the court consider only the pleadings themselves and any documents properly attached thereto. *Nederostek v. Endicott-Johnson,* 415 Pa. 136, 138, 202 A. 2d 72, 73 (1964); *Emery v. Metzner,* 191 Pa. Superior Ct. 440, 445, 156 A. 2d 627, 630 (1959).

In the present case the pleadings are quite extensive because of a large volume of exhibits attached by the parties, the authenticity of which has been admitted by both sides. Because of their complexity, before this and the lower court, it is necessary to delineate precisely what aspects of the record, in addition to the stipulated facts and exhibits, we may presently consider. By his motion for a judgment on the pleadings appellee sought a favorable

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3. On this appeal Jan T. Bata objects to his substitution under Pa. R. Civ. P. 2352 as the duly appointed successor to his father, Jan A. Bata. Shortly after Jan A. Bata's death, his counsel informed appellee and the court of this fact and specifically indicated that Jan T. desired to be substituted as a party and intended to take the necessary formal steps. Thereafter Jan T. with the approval of both the court and appellee participated as an active party in all aspects of the controversy. We are of the view that by these actions Jan T. met the requirements of Pa. R. Civ. P. 2352(a) for voluntary substitution.

4. Pa. R. Civ. P. 1035.

judgment both with respect to his own complaint and to defendant's counterclaim. As to the former we may consider only the complaint and appellant's answer, including the new matter, but with respect to the latter, we may consider appellant's counterclaim, the reply (appellee's answer containing new matter relating to the counterclaim), and the counter-reply (appellant's answer to the new matter). *Herman v. Stern,* 419 Pa. 272, 276, 213 A. 2d 594, 596 (1965); *Luria Steel & Trading Corp. v. Dittig,* 414 Pa. 197, 199 A. 2d 465 (1964).

Despite appellant's assertion to the contrary, the language and spirit of the settlement agreement clearly envisioned that he would fully co-operate in terminating the English action. Indeed he himself recognized this when he wrote to his English solicitors on March 27, 1962, and left to their discretion the manner in which they and appellee's solicitors would settle the action. While appellant later, in a letter signed by his counsel and dated February 18, 1963, withdrew his consent to the termination, the validity of this withdrawal depends upon appellant's principle claim that the entire settlement agreement is unenforceable as induced by fraud, duress, and coercion.[5] In the procedural posture of this case, however, we are confronted not with the merits, as such, but solely with the issue of whether the allegations were sufficiently pleaded to warrant a trial.

Averments of fraud are meaningless epithets unless sufficient facts are set forth which will permit an inference that the claim is not without foundation nor offered simply to harass the opposing party and to delay the pleader's own obligations. For this reason our rules require that fraud in either a complaint or reply must be "averred with particularity." Pa. R. Civ. P. 1019(b). Admittedly the line between pleading facts and evidence is not always bright; therefore, we frequently condone the inclusion of state-

5. The authenticity of the agreement as well as the correspondence, which are included as exhibits to appellee's pleadings, are admitted by appellant.

ments, which except for this requirement, would be considered impertinent. See *Williams v. Rose,* 403 Pa. 619, 170 A. 2d 577 (1961); *Custis v. Serrill,* 303 Pa. 267, 272, 154 Atl. 487 (1931); Goodrich-Amram § 1019(b)-1 (1962). While it is impossible to establish precise standards as to the degree of particularity required in a given situation, two conditions must always be met. The pleadings must adequately explain the nature of the claim to the opposing party so as to permit him to prepare a defense and they must be sufficient to convince the court that the averments are not merely subterfuge. See *Sokoloff v. Strick,* 404 Pa. 343, 172 A. 2d 302 (1961); *Hornsby v. Lohmeyer,* 364 Pa. 271, 72 A. 2d 294 (1950); *Rice v. Braden,* 243 Pa. 141, 89 Atl. 877 (1914). Especially when viewed against the background of the prior litigation, our reading of the pleadings in this case, particularly the averments of fraud, duress and coercion contained in appellant's answer, confirms the conclusion of the court below that they are "an exercise in obfuscation."

In seeking to avoid his remaining obligations under the settlement agreement, appellant appears to be making three separate arguments, although each is related to the issue of fraud. First he alleges that his assent to the agreement is invalid because it was the direct result of duress and coercion exerted by the appellee prior to and during the negotiations. In addition he maintains that the principle inducing factor was the force of adverse judgments which are alleged to have been obtained through "gross fraud" perpetrated on the courts of sister jurisdictions. Finally he asserts inadequate consideration to support the agreement. We shall discuss each argument separately.

Appellant's assertion that he was under duress or coercion when he signed the agreement is singularly without merit. Aside from the fact that these allegations are unparticularized, we find it inconceivable that appellant was subject to any degree of restraint or danger, let alone an amount sufficient to invalidate his assent. See *Yulsman*

v. DuBois, 346 Pa. 310, 30 A. 2d 323 (1943); *Smith v. Lenchner,* 204 Pa. Superior Ct. 500, 205 A. 2d 626 (1964). Duress is "that degree of restraint or danger, either actually inflicted or impending, which is sufficient in severity or apprehension to overcome the mind of a person of ordinary firmness." *Smith v. Lenchner,* supra at 500, 205 A. 2d at 628. The pleadings establish that this is not a case where an ignorant person, unrepresented by a lawyer, was forced into an unconscionable settlement by the threat of economic catastrophe; rather it is one where the party seeking to avoid is an experienced litigant who, during the entire period of negotiations, was represented by able counsel. Cf. *Otto v. Powers,* 177 Pa. Superior Ct. 253, 110 A. 2d 847 (1955). Moreover, in June 1963, four months after appellant's counsel withdrew his consent to terminating the English action on the ground of fraud, appellant completed the conditions of the $200,000 escrow and received the benefits thereunder. There is no allegation that at this time appellant was under any form of duress; thus, his actions must be viewed as a ratification of the agreement and a waiver of any claim of duress. See *In re Thorne Estate,* 344 Pa. 503, 25 A. 2d 811 (1942); Annot. 77 A. L. R. 2d 426 (1959). However, with respect to the alleged fraud, the ratification merely extinguished his right to rescind; all other remedies, including the relief prayed for in the counterclaim, remained unimpaired. *Tilgham v. Dollinberg,* 418 Pa. 604, 610, 213 A. 2d 324, 327 (1965); *Sixsmith v. Martsolf,* 413 Pa. 150, 196 A. 2d 662 (1964).

As a result of "newly discovered evidence" acquired since March 1962, appellant claims that the adverse judgments rendered in Switzerland, Delaware, and New York were obtained solely by reason of appellee's gross fraud upon these courts. This evidence is all directed to challenging the conclusions reached in prior litigation that the purported transfer from Thomas Bata to Jan Bata in 1932 was fictitious, a sham transaction engaged in solely for the purpose of insulating the value of the Bata Enterprises

from Czechoslovakian inheritance taxes. *Bata v. Hill,* 139 A. 2d 159, 201, 204 (Del. Ch. 1958), aff'd sub nom. *Bata v. Bata,* 163 A. 2d 493, 497, 519 (Del. 1960), reargument denied 170 A. 2d 711 (Del.), cert. denied, 366 U. S. 964 (1961); *Bata v. Chase Safe Deposit Co.,* 99 N. Y. S. 2d 535 (1950), aff'd sub nom. *Bata v. Bata,* 379 App. Div. 182, 108 N. Y. S. 2d 659 (1951), aff'd 306 N. Y. 96, 115 N. E. 2d 672 (1953). In particular appellant points to the transcript of a 1942 meeting between the United States Government and representatives of the Bata Enterprises, including appellee, and to certain documents from the Czechoslovakian files relating to the estate of Thomas Bata. These documents he contends clearly establishes [sic] the validity of the merits of his claim and their alleged suppression is indicative of the fraud perpetrated by the appellee upon other courts.

However, the Delaware Supreme Court considered other documents concerning the events to which the 1942 conference report relates, concluding that they were not probative on the issue of ownership. The chancellor's conclusions, adopted verbatim by the Supreme Court, preclude appellant's reliance on that document:

> ". . . much of the evidence of happenings during the war years confuses rather than assists in reaching the basic issue [control of stock in a Bata corporation]. It represents actions taken for a purpose (to avoid seizure as enemy property) which is not necessarily related to the dispute here."

Bata v. Hill, 139 A. 2d 159, 204 (Del. Ch. 1958), aff'd sub nom. *Bata v. Bata,* 163 A. 2d 493, 525 (Del. 1960).

Appellant's averments with respect to the documents supposedly shedding new light, under Czechoslovakian law, on the succession of control following Thomas Bata's death in 1932 are also effectively answered by the Delaware Supreme Court in its opinion denying reargument. After first observing that the theory advanced in the petition for re-

argument while new to the Delaware litigation was not new to the Bata litigation, the Court concluded:

> "Enough has been said to show conclusively that the theory of the case now advanced as ground for reopening it is not newly discovered. It was known to Jan's counsel for years before the institution of the Delaware litigation.
>
> Obviously, it was the deliberate decision of Jan's trial counsel here to abandon the contention. In his brief on the law on appeal, he says that Jan 'does not challenge the New York determination that there was no enforcible contract.' From a subsequent comment, it appears that he regarded the New York determination as *res judicata*. On that point we do not pass. What we do say is that the new theory was well known and deliberately abandoned in this case." *Bata v. Bata*, 170 A. 2d 711, 715 (Del. 1961).

The settlement agreement must also be viewed as an abandonment, since the reported opinions reveal that the theory advanced by appellant in this litigation is likewise not new.

Thus none of the evidence offered by appellant suggests any reason for viewing the adverse judgments as being fraudulently obtained or subject to further attack. Moreover, for a party to challenge an adjudication on the basis of newly discovered evidence, it is imperative that the evidence be of such a nature that it could not have been obtained at the time of trial by an exercise of reasonable diligence and that its introduction alone is likely to have had a significant impact on the result. *Helmig v. Rockwell Mfg. Co.*, 389 Pa. 21, 26, 131 A. 2d 622, 625 (1957). When the evidence is used, in support of a theory of fraud, to challenge a final judgment, it must further be shown that the alleged fraud prevented the complaining party from making a full and fair defense. *Culbertson's Estate*, 301 Pa. 438, 447, 152 Atl. 540, 543 (1930).

After fifteen years of exhaustive litigation, we are unwilling, on the vague allegations contained in appellant's

pleadings, to adjudge the studied conclusions of numerous tribunals a nullity. While appellant does not suggest that we deny recognition to these judgments, he does urge that appellee should be denied all benefits to be derived from them, including the enforcement of the settlement agreement. Appellant's argument, however, completely misses the mark because the only way for us to determine the validity of his assertion is to first consider if the judgments were indeed fraudulently obtained. This in turn requires us to consider appellant's contention as being in the nature of a collateral attack; otherwise we would be forced to completely ignore the judgments and relitigate the precise issues determined elsewhere, namely, who is entitled to ultimate ownership of the Bata Enterprises.

Appellant's final defense that the agreement is invalid for lack of consideration is premised upon the conclusion that everything which passed to him as a result of the agreement was in fact his property. In view of what we have already said this contention is easily dismissed.

Inasmuch as a judgment on the pleadings denies a party the right to fully develop his theories and averments at trial, a motion to that effect should be denied if a proper and seasonable amendment will cure pleading defects. *Jefferies v. Hoffman,* 417 Pa. 1, 5, 207 A. 2d 774, 776 (1965). Hence we must also consider whether the court below was correct in denying appellant leave to amend. While the right to amend is within the trial court's discretion, there is a well accepted practice which favors permitting amendments, especially at the pleading stage. Stated generally, the rule at this juncture is that leave to amend should be granted unless it would result in an error of law or in prejudice to the opposing party. *Jefferies v. Hoffman,* supra; *Schaffer v. Larzelere,* 410 Pa. 402, 406-07, 189 A. 2d 267, 270 (1963); *Cucinatti v. Ortman,* 399 Pa. 23, 30, 159 A. 2d 216, 218-19 (1960).

The present case, however, is one in which the court was acting well within its discretionary range in denying

leave to amend. The record reveals that this action was originally instituted in July 1963, removed by appellant to the federal district court, and remanded in November 1963. Shortly after remand appellant requested permission to substitute a new answer for the one he had filed with the district court. After briefs were filed and oral argument heard, the court granted appellant permission to file his new answer in order to meet our requirement that averments of fraud be pleaded with particularity. Pa. R. Civ. P. 1019(b). This answer, filed in September 1964, amounted to an amended pleading. In December, appellee moved for judgment on the pleadings. Seven months later, more than two years after the commencement of the action, appellant again requested permission to amend, but this time the court denied the request.[6] No matter how liberal an amendment policy we adopt, in fairness to both sides, a party may not be permitted to drag out the pleadings indefinitely.[7] Cf. *Cucinatti v. Ortman,* supra; *Schlosser v. Weiler,* 377 Pa. 582, 105 A. 2d 331 (1952); *Compton v. Heilman,* 331 Pa. 545, 1 A. 2d 682 (1938).

Appellant also complains of the court's failure to permit him to take the depositions of appellee and his expert on Czechoslovakian law and to rule favorably on his motion to compel appellee to produce certain documents in order to assist him in making his allegations of fraud more specific. These motions were made a year apart. Our discussion of appellant's right to amend is in part dispositive of this point, for in the words of the court below: "If the fraud allegedly perpetrated was of the 'gross proportion' claimed by defendant Bata, he must have sufficient evidence

6. Appellant also was denied leave to amend his pleadings after judgment was entered.

7. In order to give appellant every benefit of the doubt the court again heard argument and requested briefs on the proposed amendments. The court was also well within its discretionary range in denying leave to amend on the additional ground that amendments would not have advanced appellant's position. See *Gettemy Homestead Ass'n of Westmoreland,* 356 Pa. 475, 480, 52 A. 2d 325, 327 (1947).

to plead the same. . . . Further examination for discovery purposes at this stage would make a mockery of the proceedings had over a period of many years. Defendant's motion for discovery leads to the conclusion of harassment and bad faith."

So far we have [sic] considering primarily the complaint in equity. Since appellant's counterclaim involved the same issues, judgment on the pleadings was also properly granted with respect to it.

Despite the 1962 settlement agreement, appellant has persisted in advancing his claim to control of the Bata Enterprises. Settlement agreements are designed to forestall not foster litigation, and while like any other contract, there are circumstances under which they may be avoided, these circumstances do not include thinly veiled averments of fraud and duress, whose purpose is to conceal disappointment with the settlement. *Voloshen v. Mann,* 392 Pa. 253, 140 A. 2d 450 (1958); *Schlosser v. Weiler,* 377 Pa. 582, 105 A. 2d 331 (1952); *Yulsman v. DuBois,* 346 Pa. 310, 30 A. 2d 323 (1943). The orderly administration of justice requires that the protracted litigation which culminated in a total settlement by the parties now be deemed concluded. Appellant has suggested no grounds which will permit him to once again take up the sword of litigation.

The decree of the court below is affirmed. Costs on Appellant.

Mr. Justice Jones did not participate in the consideration or decision of this case.

Mr. Justice Cohen concurs in the result.